

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
3 Chairman
4 JIM IRVIN
5 Commissioner
6 MARC SPITZER
7 Commissioner

6 In the matter of:)	DOCKET NO. S-03470A-01-0000
)	
7 BRIAN LLOYD GIBBONS)	NOTICE OF OPPORTUNITY FOR
8 (CRD #1708731))	HEARING REGARDING PROPOSED
9 11126 E. Carol Avenue)	ORDER OF REVOCATION AND
10 Scottsdale, Arizona 85259)	FOR OTHER AFFIRMATIVE ACTION
)	
11 Respondent.)	
)	
)	
)	

12 **NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

13 The Securities Division ("Division") of the Arizona Corporation Commission ("Commission")
14 alleges that facts exist that warrant revocation of Respondent's registration as a securities salesman in
15 Arizona, pursuant to the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

16 **I.**

17 **JURISDICTION**

18 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
19 Constitution and the Securities Act.

20 **II.**

21 **RESPONDENT**

22 2. Respondent Brian Lloyd Gibbons ("GIBBONS") first became a registered securities
23 salesman in Arizona on or about December 10, 1987. He was registered in association with: The
24 Stuart-James Company, Incorporated (December 10, 1987 - November 23, 1990), First American
25 Biltmore Securities, Inc. (September 20, 1991 – October 18, 1991), Franklin-Lord, Inc. (December
26 12, 1991 – April 3, 1992), Franklin-Lord, Inc. (May 11, 1992 – August 5, 1993), Dickinson & Co.

1 (January 18, 1994 – February 20, 1997), and Donald & Co. Securities, Inc. (August 19, 1997 –
2 September 18, 2001). GIBBONS's Arizona registration is currently suspended because he is not
3 associated with a registered dealer, pursuant to A.R.S. § 44-1949. GIBBONS's last known address
4 is 11126 E. Carol Avenue, Scottsdale, Arizona 85259.

5 **III.**

6 **FACTS**

7 3. On October 2, 1991, the National Association of Securities Dealers Regulation, Inc.
8 ("NASD") commenced case #3A910102 against GIBBONS. In its decision rendered February 14,
9 1992, the NASD found that GIBBONS had failed to pay an arbitration award in the amount of
10 \$43,793 that had been obtained against him by customers John and Helen Rodittis. GIBBONS was
11 censured, fined \$5,000, and assessed costs. In addition, the NASD ordered that unless GIBBONS
12 paid the amount of the award, or reached a settlement with the customers, within 30 days,
13 GIBBONS would be barred from association with NASD member firms.

14 4. GIBBONS failed to pay the award or reach agreement with the customers, and was
15 barred from association with NASD member firms on or about March 16, 1992, pursuant to the
16 terms of the February 14 order.

17 5. Subsequently, the NASD accepted a late appeal from GIBBONS, permitting him to be
18 associated with NASD member firms pending disposition of the appeal.

19 6. On September 14, 1992 the NASD affirmed the sanctions, but held the industry bar in
20 abeyance, allowing an additional 30 days for GIBBONS to negotiate with the customers an
21 arrangement for paying the arbitration award. GIBBONS finally complied and the NASD lifted the
22 threat of industry bar on October 14, 1992.

23 7. On September 14, 1994, the NASD commenced case #3A940038 against GIBBONS. In
24 its decision rendered April 13, 1995, the NASD found that GIBBONS had provided inaccurate and
25 misleading information to the NASD staff in response to their requests for information. The NASD
26

1 found that GIBBONS had made misrepresentations to staff concerning \$30,000 in compensation he
2 had received as a result of securities sales away from his dealer firm.

3 8. In the April 13, 1995 decision, the NASD censured GIBBONS, fined him \$10,000,
4 assessed costs against him, and suspended him from association with NASD member firms for 30
5 days.

6 9. GIBBONS appealed the decision to the United States Securities and Exchange
7 Commission ("SEC"), which sustained the findings and sanctions in all respects on May 8, 1996, in
8 SEC Release #34-37170.

9 10. GIBBONS then appealed to the United States Court of Appeals for the Ninth Circuit.
10 The Court affirmed the findings and sanctions on or about April 25, 1997.

11 11. GIBBONS's suspension began on June 16, 1997, and continued through the close of
12 business on July 15, 1997.

13 12. On or about June 12, 1995, the NASD rendered a decision in favor of customer Joanne
14 A. DuPont, and against GIBBONS and Franklin-Lord, Inc. ("Franklin-Lord"), in arbitration case
15 #94-00508 before the NASD. The award directed GIBBONS and Franklin-Lord, jointly and
16 severally, to pay DuPont the sum of \$365,029.00 as compensatory damages, plus interest at the rate
17 of 10% per annum, accruing on outstanding amounts from the date of the award until the damages
18 should be paid in full. GIBBONS received notice of the award, and the award was confirmed by a
19 judgment of the Superior Court, Maricopa County, in or about June 1995.

20 13. On February 21, 1996, in a proceeding unrelated to the DuPont matter, the Commission
21 revoked Franklin-Lord's Arizona securities dealer registration. This action, among others, was
22 taken in Commission Decision No. 59513, and the Commission denied the respondents' Application
23 for Rehearing and Review on April 24, 1996, in Decision No. 59607.

24 14. On or about August 4, 1997, DuPont and GIBBONS entered into a settlement
25 agreement (the "DuPont Settlement"). GIBBONS agreed to pay, and DuPont agreed to accept in
26 satisfaction of the award against GIBBONS, the principal amount of \$100,000.00, plus simple

1 interest of 10% per annum. As part of the DuPont Settlement, GIBBONS promised to pay the sum
2 of \$5,000 by September 30, 1997, to make 36 consecutive monthly payments of not less than \$1,000
3 each beginning on September 30, 1997, and to make a final, “balloon” payment on September 30,
4 2000, of the entire balance then outstanding plus any accrued interest.

5 15. On or about August 8, 1997, GIBBONS and Donald & Co. Securities, Inc. (“Donald &
6 Co.”), consented to several special terms and conditions in connection with their application to the
7 Commission to permit GIBBONS to be registered as a securities salesman in Arizona in association
8 with Donald & Co. (the “Special Terms”).

9 16. In the Special Terms, GIBBONS expressly consented that his Arizona securities
10 salesman’s registration was “contingent upon his timely payment of the amounts set forth in [the
11 DuPont Settlement].”

12 17. GIBBONS did not timely pay all amounts due pursuant to the DuPont Settlement.

13 18. In particular, GIBBONS failed to make the balloon payment that was due on
14 September 30, 2000.

15 19. As of September 30, 2000, approximately \$90,000 was due and owing from GIBBONS
16 to DuPont pursuant to the DuPont Settlement.

17 20. On December 19, 2000, the NASD commenced a Non-Summary Suspension
18 Proceeding, No. ARB010001, against GIBBONS. In that regard, the NASD notified GIBBONS
19 that it intended to suspend his registration as a result of his failure to pay the amounts due under the
20 DuPont Settlement.

21 21. GIBBONS requested a hearing, which took place on April 11, 2001, pursuant to NASD
22 rules.

23 22. On July 26, 2001, the NASD issued its decision, suspending GIBBONS from
24 association with NASD member firms for an indefinite period, until he should provide documentary
25 evidence to the NASD showing that he has paid the full amount due under the DuPont Settlement,
26 has secured DuPont’s agreement to modify the DuPont Settlement, or has filed a bankruptcy petition

1 or been discharged in bankruptcy. In part, the July 26 decision was based upon findings that
2 GIBBONS had sufficient income and assets to have paid all or a significant portion of the amount
3 that was due on September 30, 2000, and that GIBBONS instead had chosen to spend those
4 resources on luxuries for himself and his wife.

5 IV.

6 REVOCATION PURSUANT TO A.R.S. § 44-1962

7 (Denial, Revocation or Suspension of Registration of Salesman)

8 23. GIBBONS's conduct is grounds to revoke GIBBONS's registration as a securities
9 salesman with the Commission pursuant to A.R.S. § 44-1962. Specifically, GIBBONS:

10 a) Is lacking in integrity, as specified in A.R.S. § 44-1962(A)(4), in that he:

- 11 (1) Failed to pay timely the amounts he owed under the NASD's
12 arbitration award in favor of DuPont;
- 13 (2) Failed to pay timely the amounts he owed under the DuPont
14 Settlement;
- 15 (3) Failed to pay timely the amounts he owed under the DuPont
16 Settlement, despite having agreed that his Arizona securities
17 salesman registration was contingent upon his compliance with the
18 terms of the DuPont Settlement; and/or
- 19 (4) Conducted himself in a manner demonstrating lack of integrity over
20 several years' time, in that he (i) failed to pay timely the amounts he
21 owed under the NASD's arbitration award against him in 1992, (ii)
22 provided inaccurate and misleading information to NASD staff in
23 response to their requests for information concerning his securities
24 business activities, and/or (iii) failed to pay timely the amounts he
25 owed as detailed in paragraphs (1) through (3) above; and/or

1 b) Has engaged in dishonest or unethical practices in the securities industry, as
2 specified in A.R.S. § 44-1962(A)(10), in that he:

3 (1) Failed to pay timely the amounts he owed under the NASD's
4 arbitration award in favor of DuPont;

5 (2) Failed to pay timely the amounts he owed under the DuPont
6 Settlement;

7 (3) Failed to pay timely the amounts he owed under the DuPont
8 Settlement, despite having agreed that his Arizona securities
9 salesman registration was contingent upon his compliance with the
10 terms of the DuPont Settlement; and/or

11 (4) Conducted himself in a manner demonstrating dishonest or unethical
12 practices in the securities industry over several years' time, in that he
13 (i) failed to pay timely the amounts he owed under the NASD's
14 arbitration award against him in 1992, (ii) provided inaccurate and
15 misleading information to NASD staff in response to their requests
16 for information concerning his securities business activities, and/or
17 (iii) failed to pay timely the amounts he owed as detailed in
18 paragraphs (1) through (3) above.

19 **V.**

20 **REQUESTED RELIEF**

21 The Division requests that the Commission grant the following relief against
22 GIBBONS:

23 1. Order the revocation of GIBBONS's registration as a securities salesman pursuant to
24 A.R.S. § 44-1962; and

25 2. Order any other relief that the Commission deems appropriate.
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2 **VI.**

3 **HEARING OPPORTUNITY**

4 GIBBONS may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A
5 request must be in writing and received by the Commission within 10 business days after service of
6 this Notice of Opportunity for Hearing. GIBBONS or his attorney must deliver or mail the request
7 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
8 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and
9 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
10 Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

11 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
12 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
13 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
14 may, without a hearing, enter an order against GIBBONS granting the relief requested by the
15 Division in this Notice of Opportunity for Hearing.

16 Persons with a disability may request a reasonable accommodation such as a sign language
17 interpreter, as well as request this document in an alternative format, by contacting Shelly M.
18 Hood, ADA Coordinator, voice phone number 602-542-3931, e-mail shood@cc.state.az.us.
19 Requests should be made as early as possible to allow time to arrange the accommodation.
20

21 Dated this _____ day of December, 2001.
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24 _____
Mark Sendrow
Director of Securities
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